

CHAPTER 24

WETLANDS PROTECTION

Section 24-2. Jurisdiction (add to existing section)

- g. Vernal Pool Resource Area shown in the table below. (See also definition.)

Zoning District and/or area of City	Vernal Pool Resource Area Size* There is no additional buffer zone around a Vernal Pool Resource Area
Central Business, General Business, Neighborhood Business, Highway Business, General Industrial, Special Industrial, Planned Village, Medical, Urban Residential-B and Urban Residential-C and municipal landfill properties.	Vernal Pool and areas within 100 feet of the vernal pool, except as noted in this table below.
Non-residential uses only in the Business Park District.	Vernal Pool and areas within 100 feet of the vernal pool
All areas in the Water Supply Protection overlay which were zoned residential as of 1/1/2006.	Vernal Pool and areas within 200 feet of the vernal pool
All other areas not shown above (Rural Residential, Suburban Residential, Special Conservancy, Urban Residential A).	Vernal Pool and areas within 200 feet of the vernal pool

Section 24-9. Definitions (add to existing section)

Vernal Pools: A ‘vernal pool’ shall include vernal pools defined under the Wetlands Protection Act, G.L. Ch. 131, §40 and Regulations thereunder, 310 CMR 10.00, and any site which potentially could be a vernal pool under that state definition. The Vernal Pool Resource Area shall include the vernal pool and an area, as described in the table in Section 24-2, extending laterally from the mean annual high-water line defining the depression, but shall not include existing lawns, gardens, and landscaped or developed areas.

Vernal Pool habitat is presumed to exist for any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries.

Section 24-10. Performance Standards (add to existing section)

Work within the Vernal Pool Resource Area

- A. The City of Northampton Conservation Commission may issue an Order of Conditions for the construction, rehabilitation and maintenance of linear systems within the Vernal Pool Resource Area, but not within the vernal pool (although no such project may be permitted which will have any adverse effect on specified habitat sites of rare vertebrate or invertebrate species). Linear systems include, but are not limited to: footpaths, bikepaths, pipelines, and conduits for the transmission of utilities (water, fuel, sewage, and power). Evaluation of such projects shall be based on the applicant’s ability to avoid, minimize, and mitigate disturbance to the resource area. With the exception of existing linear systems, the applicant shall avoid disturbance in the resource area. The applicant must prove to the Conservation Commission, beyond a reasonable doubt, that avoidance is not possible. If avoidance is not possible, the applicant must provide documentation that any adverse impacts from the work will be minimized and that the design specifications are

commensurate with the projected use and are compatible with the character of the Vernal Pool Resource Area. In the exercise of this discretion, the issuing authority shall consider the magnitude of the alteration and the significance of the project site to the interests identified in Section 24-1 of the City of Northampton Wetlands Ordinance, the availability of reasonable alternatives to the proposed activity, the extent to which adverse impacts are minimized, and the extent to which mitigation measures, such as resource area replication, habitat restoration, and open space preservation are provided to contribute to the protection of the interests identified in Section 24-1 of the City of Northampton Wetlands Ordinance.

- B. The City of Northampton Conservation Commission may issue an Order of Conditions for the construction of a driveway crossing within the 100-200 ft section of the Vernal Pool Resource Area (although no such project may be permitted which will have any adverse effect on specified habitat sites of rare vertebrate or invertebrate species). Such projects may be permitted if the applicant provides evidence that the work will not cause adverse impacts to the Vernal Pool Resource Area. In the exercise of this discretion, the issuing authority shall consider the magnitude of the alteration and the significance of the project site to the interests identified in Section 24-1 of the City of Northampton Wetlands Ordinance, the availability of reasonable alternatives to the proposed activity and the extent to which mitigation measures, including resource area replication, habitat restoration, and open space preservation are provided to contribute to the protection of the interests identified in Section 24-1 of the City of Northampton Wetlands Ordinance.
- C. The City of Northampton Conservation Commission may issue an Order of Conditions for the rehabilitation and maintenance of existing structures and disturbed areas (structures or disturbed areas existing as of 01/01/2006) within the Vernal Pool Resource Area, but not within the vernal pool (although no such project may be permitted which will have any adverse effect on specified habitat sites of rare vertebrate or invertebrate species). Such projects may be permitted if the applicant provides evidence that the work will not cause additional impacts to the Vernal Pool Resource Area. In the exercise of this discretion, the issuing authority shall consider the magnitude of the alteration and the significance of the project site to the interests identified in Section 24-1 of the City of Northampton Wetlands Ordinance, the availability of reasonable alternatives to the proposed activity and the extent to which mitigation measures, including resource area replication, habitat restoration, and open space preservation are provided to contribute to the protection of the interests identified in Section 24-1 of the City of Northampton Wetlands Ordinance.

Vernal Pool Habitat

The presumptive definition for vernal pools is rebuttable based on systematic field observations in the City of Northampton by the Northampton Conservation Commission showing that virtually all basins that possess the defined characteristics actually host breeding vernal pool species. Undoubtedly this is a particular consequence of Northampton's enduring woodlands and wetlands.

The presumption of essential vernal pool habitat value may be overcome with the presentation of credible evidence, which in the judgment of the Conservation Commission demonstrates that the wetland does not provide, or cannot provide, vernal pool habitat functions. For the purposes of demonstrating that a ponding area is not a vernal pool and overcoming the presumption of vernal pool habitat the Commission will consider:

- A. Evidence that the ponding area does not hold water for at least two continuous months in most years. The term "most years" shall mean three out of five consecutive years.

OR

- B. Evidence that vernal pool species do not breed or have not bred in the ponding area, and evidence that the ponding area could not be a viable breeding site for vernal pool species due to incompatible physical, chemical, biological, or other persistent conditions at the site in most years. Such evidence could include, without limitation, several months of pH and dissolved oxygen measurements yielding values incompatible with amphibian or reptile breeding.

Many of the indicators of vernal pool habitat are seasonal. For example, certain salamander egg clusters are only found between late March and late May. Wood frog chorusing only occurs between late March and May, and then only at night. Consequently, failure to find evidence of breeding must be tied explicitly to those periods during which the evidence is most likely to be available. Accordingly, in the case of challenges to the presumption of vernal pool habitat the Conservation Commission may require that the determination be postponed until the appropriate time period consistent with the evidence being presented. The Commission may also require its own site visits as necessary to confirm the evidence.

If a property owner grants permission by March 1st of any year, the Northampton Office of Planning and Development or its agent will inspect and certify vernal pools (usually in the spring of each year). The City or its agent will then either certify eligible vernal pools with the Commonwealth of Massachusetts or provide a statement that an inspected potential vernal pool is not actually a certifiable vernal pool in accordance with the necessary credible evidence as required in Section 24-10 (6). A statement that a site is not a vernal pool shall be presumptive under this ordinance for three years but does not indicate that it is not otherwise a resource area. The fee for this work shall be made payable to the City or its agent, as applicable, and shall be the same fee as being charged for a Notice of Resource Area Delineation.